

STATE OF INDIANA)	HENRY COUNTY CIRCUIT COURT
) ss:	
COUNTY OF HENRY)	CAUSE NO.
ISAAC IMEL,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CHARLES A. BEARD MEMORIAL)	
SCHOOL CORPORATION,)	
)	
Defendant.)	

**VERIFIED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND DAMAGES**

COMES NOW Plaintiff Isaac Imel, being sworn upon his oath, and states that:

Introductory Statement

1. This is an action for declaratory and injunctive relief brought by a fifteen (15) year old 10th grade student, Isaac Imel, to challenge his suspension and expulsion from Knightstown High School for his participation in off-school grounds expression that did not constitute unlawful activity. The defendant's actions are without legal authority and violate Isaac Imel's right to free speech under the First Amendment to the United States Constitution. This action is brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

2. Isaac Imel is a sophomore student at Knightstown High School and a resident of Henry County, Indiana.
3. The Charles A. Beard Memorial School Corporation of Knightstown, Indiana operates public schools, including Knightstown High School.

Facts

4. Isaac Imel is a fifteen- year-old sophomore student at Knightstown High School.
5. From approximately the fall of 2005 to the summer of 2006, two of Isaac Imel's friends, ("H." and "C."), who are also sophomore students at Knightstown High School, wrote and created a home movie in which they asked Isaac to participate as a "special guest."
6. The movie was created entirely off of school grounds, at private residences, during non-school hours using non-school equipment.
7. The movie, entitled "The Teddy Bear Master," is a spoof of horror movies, was inspired by the television series "South Park," and is over one hour in length.
8. Much of the movie is of generally poor quality; frequently the "dialogue" cannot be heard or is broken up, and the lighting is sometimes so insufficient that it is difficult to see anything at all.
9. In the movie, evil masked teddy bears and other stuffed animals "possess" a person who becomes the "Teddy Bear Master" and who instructs the stuffed animals to perform evil deeds.
10. The DVD of the movie is divided into chapters, each of which contains one to several scenes.
11. In one scene of the movie in "Chapter 5," H. plays the part of a teacher named "Mr. Clevenger."
12. There is a teacher at an intermediate school of the Charles A. Beard Memorial School Corporation whose name is Daniel Clevenger.

13. The scene in “Chapter 5” takes place in a classroom where “Mr. Clevenger” is teaching.

14. In this scene Isaac Imel and his other friend, C., play the roles of obnoxious students who harass the teacher character, “Mr. Clevenger,” by throwing paper wads at him and calling him names.

15. Throughout this scene, Isaac and the other “student,” C., wrestle with each other, laugh, call out obnoxious words and phrases to “Mr. Clevenger,” and behave in a generally juvenile manner.

16. At one point in this scene, Isaac’s character pretends to kick the “Mr. Clevenger” character in the groin.

17. At the next point in the scene, both student characters dance around, and the “Mr. Clevenger” character joins them in the dancing.

18. The next scene, in “Chapter 6,” takes place at the hide-out of the Teddy Bear Master and the stuffed animals.

19. In this scene, the Teddy Bear Master, played by H., is pretending to cry and says to the stuffed animals, “Kill Mr. Clevenger.”

20. Later in this scene, the Teddy Bear Master explains that he “hates” Mr. Clevenger because Mr. Clevenger embarrassed the Teddy Bear Master in class.

21. The next scene, which begins in “Chapter 6” and continues into “Chapter 7,” again takes place in “Mr. Clevenger’s” classroom; however, Isaac Imel is not in this scene.

22. This scene is a “flash-back” in which “Mr. Clevenger” addresses the class which consists of the “student,” C., and the evil stuffed animals when they were younger and were students in “Mr. Clevenger’s” class.

23. Again, the students in this scene throw paper wads at “Mr. Clevenger” and generally mock him in a juvenile manner and with offensive gestures, although the “Mr. Clevenger” character is unaware of the latter.

24. After all the teddy bears and students exit the class room except for the stuffed Santa Clause, the stuffed Santa Clause pretends to perform oral sex on the “Mr. Clevenger” character for extra-credit in school.

25. In the following scene of “Chapter 7,” which takes place “in the present-day” at the teddy bear hide-out, the Teddy Bear Master tells the teddy bears to “take care of Mr. Clevenger,” and the teddy bears leave the hide-out.

26. In the next scene, again in “Chapter 7,” the teddy bears come back into Mr. Clevenger’s classroom where Isaac and C. are again playing the obnoxious “students.”

27. However, this time Isaac and C.’s characters attack the teddy bears who have come to attack “Mr. Clevenger.”

28. While the “students” played by Isaac and C. wrestle with the teddy bears, the teddy bear called “Becky” comes into the room to attack them, there is the sound of gun fire, and then Becky falls down.

29. C.’s character then says, apropos of nothing, “Mr. Clevenger’s wife is stacked!”

30. C.’s character then pulls the mask off of the Becky teddy bear and says, “That’s not Mr. Clevenger’s wife.”

31. After attacking and apparently defeating the teddy bears, the “students” run out of the class room, and the remaining teddy bears also leave.

32. Isaac is in no other scenes of the movie except the “nerds” scene in which he and H. and C. play “nerds” who are also attacked by the evil teddy bears, and a scene toward the end of the movie in which he chases another boy through a yard wearing a mask and carrying the stuffed Santa Clause on his back.

33. Issac Imel never showed “The Teddy Bear Master” movie to anyone; in fact, until he was disciplined by the school, Isaac Imel never even possessed a copy of “The Teddy Bear Master” movie, and was not even aware that it had been “completed.”

34. Isaac Imel never brought a copy of “The Teddy Bear Master” home movie onto school grounds.

35. On information and belief, “The Teddy Bear Master” home movie was not viewed by any students while they were attending any of defendant’s schools.

36. Isaac Imel never intended to cause any harm or injury to any person, or to make any person fear harm or injury, in participating in the making of the home movie, “The Teddy Bear Master.”

37. Isaac Imel did not, and did not intend to, publish the home movie, “The Teddy Bear Master.”

38. On October 12, 2006, the principal of Knightstown High School, Mr. Diagostino, called Isaac Imel to his office and informed Isaac that he was being suspended from school for ten days, with a recommendation of expulsion, for taking part in a movie that allegedly “threatened” and “intimidated” a teacher.

39. On October 17, 2006, Isaac's parents received, by mail, written notification of Isaac's suspension, "Suspension Notification," along with a "Misconduct Affidavit," true copies of which are attached hereto and incorporated herein as Exhibit 1.

40. On October 13, 2006 and again on October 18, 2006, Mike Imel asked Mr. Diagostino for a copy of "The Teddy Bear Master" home movie; however, the copy the school provided to Mike Imel in a DVD contained only the first two "chapters" of the movie, which did not include any of the allegedly "threatening" scenes.

41. After the Imels inquired about the incomplete DVD, Mr. Diagostino informed Kate Imel (Mike Imel's current wife) that the school's copy of the DVD was also not working properly.

42. On October 21, 2006 the Imels obtained a DVD with a complete copy of "The Teddy Bear Master" home movie from H.'s mother, a copy of which is attached hereto and incorporated herein as Exhibit 2.

43. On October 20, 2006, Kate Imel picked up from Knightstown High School a copy of the notice proposing that Isaac Imel be expelled for the remainder of the school year.

44. On October 30, 2006, the school called Kate Imel and informed her that the school now had a complete, working copy of "The Teddy Bear Master" home movie for the Imels to view.

45. The Imels timely requested an expulsion hearing, which was held on October 31, 2006. On November 3, 2006, the hearing expulsion examiner issued his decision expelling Isaac Imel through the 2006-2007 school year. See Expulsion Hearing Decision, attached hereto and incorporated herein as Exhibit 3.

46. At some point, the defendant provided a copy of the home movie, "The Teddy

Bear Master,” to the Intermediate school teacher, Daniel Clevenger, who in turn provided it to the Henry County Sheriff’s Department for investigation of whether or not the students involved in the making of the DVD had committed a crime.

47. Local newspapers have reported that the Henry County Prosecutor’s Office has reviewed the DVD of “The Teddy Bear Master” in its entirety, found that it contained no threat to anyone or any other unlawful activity, and decided not to press charges against any of the students involved with the making of the home movie.

48. Indiana law provides that public school may only punish a student for activity that takes place off of school grounds (and does not involve a school activity, function or event) if the student’s activity is unlawful and either 1) the unlawful activity can reasonably be considered to be an interference with school purposes or an educational function, or 2) the student’s removal is necessary to restore order or protect persons on school property. Ind. Code §30-33-8-15.

49. Isaac Imel has no disciplinary record prior to the suspension/expulsion at issue in this case.

50. Isaac Imel has been out of school since October 13, 2006.

51. Since Isaac Imel’s suspension from school, the school has not permitted him to do any of his school work.

52. Since his suspension from school, Isaac has been depressed and he has lost 14 pounds in weight.

53. Defendant’s actions are causing Isaac Imel irreparable harm for which there is no adequate remedy at law.

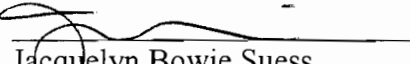
54. At all times defendant’s actions have been taken under color of state law.

Claims for relief

55. Defendant has violated the First Amendment to the United States Constitution by punishing Isaac Imel for his expressive activity that took place off of school grounds, was not unlawful, did not affect school purposes or the educational function, and did not cause disorder or a threat to any person on school property.

WHEREFORE, plaintiff requests that this Court:

1. Enter a declaratory judgment that defendant's actions violate the United States Constitution as specified above.
2. Enter a preliminary injunction, later to be made permanent, enjoining defendant to immediately allow Isaac Imel to again attend Knightstown High School and make up any missed school work.
3. Enter a permanent injunction enjoining defendant to expunge from Isaac Imel's school disciplinary record any reference to the suspension and proposed or actual expulsion of Isaac Imel related to the home movie "The Teddy Bear Master."
4. Award plaintiff compensatory damages.
5. Award plaintiff his costs and reasonable attorney's fees pursuant to 42 U.S.C. §1988.
6. Award all other proper relief.

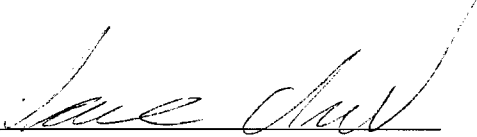


Jacquelyn Bowie Suess
Att'y No. 17241-53
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059, x225
Attorney for Plaintiff

VERIFICATION

I hereby verify, under penalty of perjury, that the foregoing factual representations are true to the best of my knowledge and belief.

11-5-06
Date


Isaac Imel

CHARLES A. BEARD MEMORIAL SCHOOL CORPORATION
345 North Adams Street
Knightstown, IN. 46148

SUSPENSION NOTIFICATION

October 13, 2006

To: Parent, Guardian, or Custodian of Isaac Imel

From: Jim Diagostino, Principal
Knightstown High School

This notice is to inform you that Isaac Imel was suspended from attendance at Knightstown High School for 10 school day(s) beginning on 10-13-06. This suspension includes all extra-curricular and school-sponsored activities, including athletics.

If you hear nothing further, this student should return to school at the beginning of the normal school day on 10-31-06 * *Recommended for Expulsion*

Prior to being suspended from school attendance, I provided this student with an informal hearing on the alleged misconduct which included:

1. A written or oral statement of the charge.
2. A summary of the evidence.
3. A chance for the student to explain his/her actions.

At this meeting, I determined that this student:

1. Committed the following school infraction: 13-Intimidation.
2. Will be suspended from school for: 10 school day.

Suspension from school attendance is a serious matter and we must have your assistance to assure that the conduct that led to this suspension will not occur again. If you wish to discuss the circumstances that required this suspension, please contact me at 765-345-5153.

Jim Diagostino, Principal
KHS

MISCONDUCT AFFIDAVIT	STUDENT <u>L. Eric</u>	GRADE <u>10</u>	DATE <u>11/12</u>	KNIGHTSTOWN HIGH SCHOOL 8149 W. US Hwy. 40 • Knightstown, IN 46148 PH: 765-345-5153
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Comments:

Took part in the promotion of a DVD in which he stated, if teacher was interested, information, use of sexual, libel

REASON FOR REFERRAL

☐ EXCESSIVE TARDINESS

☐ ANNOYING TO CLASSMATES

☐ DESTRUCTIVE TO SCHOOL PROPERTY

☐ LACK OF CLASS MATERIALS

☐ LACK OF COOPERATION

☐ RUDE, DISCOURTEOUS

☐ RESTLESS, INATTENTIVE

☐ EXCESSIVE TALKING

☐ MISCHIEF

Comments:

10 Days 155 11/13, 16-20

The communication of suspension

for harassment of 11-17-04

ACTION TAKEN

☐ STUDENT DETAINED FROM CLASS UNTIL HE MEETS TEACHER'S CONDITIONS FOR REINSTATEMENT

☐ CONFERENCE WITH STUDENT

☐ DETAINED AFTER SCHOOL

☐ PLACED ON SUSPENSION

☐ WILL SUSPEND NEXT TIME

☐ LETTER SENT HOME

☐ PARENTS CONTACTED BY PHONE

☐ PARENT CONFERENCE REQUESTED

☐ PARENT CONFERENCE HELD

☐ REFERRED TO COUNSELOR

Comments:

11/12

PRINCIPAL'S SIGNATURE

[Signature]

Comments:

11/12

DATE

11/12

Exhibit 2
Imel v. C.A.B. Memorial
School Corp.

Form 10
2004

CHARLES A. BEARD MEMORIAL SCHOOL CORPORATION

**345 North Adams Street
Knightstown, Indiana 46148
Phone: 765-345-5101
FAX: 765-345-5103**

EXPULSION EXAMINER'S WRITTEN SUMMARY OF EVIDENCE; DETERMINATION AND NOTICE OF ACTION TAKEN

***Isaac Imel*
111-3-06**

**November 3, 2006
Date**

TO: Isaac Imel - Student
TO: Mike Imel and Linda Imel - Parent, Guardian or Custodian
FROM: Anthony Triarsi - Expulsion Examiner

On October 31, 2006, a meeting was held in the Central Office Building of the Charles A. Beard Memorial School Corporation located at 345 North Adams Street, Knightstown, Indiana, at 9:00 a.m., for the purpose of considering the matter of the proposed expulsion of Isaac Imel. Mr. Diagostino, principal of Knightstown High School, charged the student with engaging in the following conduct:

Took part in the production of a DVD in which a teacher was referenced in a threatening manner with intimidation, slander, and libel.

This conduct constitutes a violation of the following established, written student discipline rules(s):

Page 31 of the student handbook under "Grounds for Expulsion or Suspension", Number 5 states: "Threatening or intimidating any student or school official."

Page 49 of the student handbook regarding "Grounds for Expulsion or Suspension", Section 14, Letter (a), Numbers 1 & 2 regarding (1) student misconduct; and (2) substantial disobedience.

Page 49 & 50 of the student handbook under "Unlawful Activity by Student" Section 15, Numbers 1 & 2:

1. the unlawful activity may reasonably be considered to be an interference with school purposes or an education function; or
2. the student's removal is necessary to restore order or protect persons on school property; including an unlawful activity during weekends, holidays, other school

breaks, and the summer period when a student may not be attending classes or other school functions.

Indiana Code: IC20-33-8-3; IC20-33-8-14; IC20-33-8-15

Mr. Diagostino requested that the student be expelled through the end of the current school year.

The school corporation was present and represented by Mr. Jim Diagostino.

Present on behalf of the Student/Parent were:

- The student himself, Isaac Imel
- Mr. Mike Imel and Mrs. Linda Imel – Father and Mother

Mr. Diagostino submitted the following documents and other evidence:

- A detailing of events beginning on Monday, October 9, 2006, when a parent of a Knightstown High School student brought in a DVD. The parent told Mr. Diagostino that he needed to view the DVD as it contained a threat made against a Knightstown Intermediate School teacher, Mr. Clevenger. Mr. Diagostino spoke with one of the four students listed as part of the production. The student said that the DVD was produced a summer ago. The student said that there was a threat made about a teacher, but that it was the character in the play making the reference. He stated that there was no intent to cause harm to Mr. Clevenger. He also stated that there was profanity and sexual references.

On Wednesday, October 11, 2006, spoke with the Superintendent and asked him to consult the School Board attorneys as to the legalities of the DVD. The Superintendent contacted Mr. Diagostino the next day and told him to begin the expulsion process.

On Thursday, October 12, 2006, Mr. Diagostino met with each student associated in the production of the DVD. They each gave him a statement of their involvement in the production of the DVD. He had them write their statement in their own words. Each student admitted to their association with the production of the DVD, which included a threat to a teacher along with slander and libel. Mr. Diagostino notified each of the students of their suspension from Knightstown High School for ten (10) days pending expulsion for the remainder of the school year.

- A signed statement by Isaac Imel, in his own handwriting, dated October 12, 2006. The statement contained the following points:
 - "Joke about beating him up, me, Harrison, Charlie, Cody."
 - "I am going to kill Mr. Clevenger", Harrison, Charlie, or both.
 - "I took part in a video along with Charlie, Harrison, and Cody. I was only a short part of the video I haven't been a part of it since towards the end of the last school year. I regret everything that was said and done in making. And for that am deeply sorry for everything that offended Mr. Clevenger."
 - I don't remember specific things said but I remember the general idea. Just to joke around about hurting him. Nothing serious was meant.

- Isaac's Attendance Report dated October 25, 2006, indicating nine (9) absences due to being suspended starting on October 13. Prior to the suspension, the report shows no absences.
- Isaac's Student Discipline Report dated October 25, 2006, indicating no disciplinary infractions.
- Isaac's Grade Report dated October 23, 2006, showing grades earned up until October 13, to include one day of his suspension.

Isaac Imel and his parents submitted the following documents and other evidence:

- Several pages of annotated Indiana Code references specifically citing Educational issues.
- Letter of character reference for Isaac Imel by Knightstown High School teacher Bobbie A. Rogers
- Letter of character reference for Isaac Imel by Knightstown High School teacher Kelli Wiley.
- A memo from Dr. Dave McGuire, Superintendent of the Charles A. Beard Memorial School Corporation, to School Board members. The memo stated that the students had been expelled.

SUMMARY OF THE EVIDENCE

The summary of Mr. Diagostino's evidence and testimony is as follows:

- Mr. Diagostino provided information that Isaac Imel took part in the production of the DVD.
- The DVD included a threat to a teacher along with slander and libel.
- Mr. Diagostino concluded his evidence by playing a portion of the DVD.

The summary of the evidence presented by Mr. Mike Imel and Mrs. Linda Imel is as follows:

- They both reiterated that Isaac Imel is a kind, thoughtful, and athletic kid who doesn't get in trouble.
- The video was not made at school.
- He did not bring it to school.
- He did not know it was being sold.
- Henry County Prosecutor stated no charges were to be file against any of the students.
- Mrs. Linda Imel stated that the school severely over reacted.

The summary of the Student/Parent's documents and other evidence is as follows:

Mr. Diagostino believes the proposed expulsion is warranted because:

Isaac Imel took part in the production of a DVD that made reference to a teacher in a threatening manner with intimidation, slander, and libel.

The student and his parents believe the proposed expulsion is not warranted because:

The DVD contained nothing but nonsense. Since the Henry County Prosecutor stated that they saw no criminal activity or intimidation on the DVD and no charges would be filed. The parents content that since no crime has been committed and to keep Isaac Imel out of school any longer or to have him out of school to begin with, is a violation of his First Amendment rights.

On the basis of the above, I find and conclude that the student engaged in the following conduct:

By his own admission, Isaac Imel took part in the production of the DVD. I recognize that the contents of the DVD were not deemed to be unlawful, not intended to be distributed, and was a "just to joke around about hurting him".

However, the DVD was made available for distribution and was viewed by students in the school system. The video contained a threat made against a Knightstown Intermediate School teacher, Mr. Clevenger, which constitutes a violation of the following established, written student discipline rules(s):

- Page 31 of the student handbook under "Grounds for Expulsion or Suspension", Number 5 states: "Threatening or intimidating any student or school official." These threatening references are seen as defaming a staff member so as to lower the teacher's esteem in the eyes of students and other staff. The DVD has caused a disruption to the education purpose of the school.

- Page 49 of the student handbook regarding "Grounds for Expulsion or Suspension", Section 14, Letter (a), Numbers 1 & 2 regarding (1) student misconduct; and (2) substantial disobedience.

- Page 49 & 50 of the student handbook under "Unlawful Activity by Student" Section 15, Numbers 1 & 2:
 1. the unlawful activity may reasonably be considered to be an interference with school purposes or an education function; or
 2. the student's removal is necessary to restore order or protect persons on school property; including an unlawful activity during weekends, holidays, other school breaks, and the summer period when a student may not be attending classes or other school functions.

* * * *

DETERMINATION AND NOTICE OF ACTION TAKEN

I, therefore, determine and give notice that this matter be resolved as follows:

Isaac Imel is expelled from attendance at Knightstown Community High School for the remainder of the 2006 – 2007 school year and from attendance at all of its extra-curricular functions. This expulsion includes expulsion from any and all school-related events of the Charles A. Beard Memorial School Corporation. Isaac Imel may not be present in buildings or on school grounds of the Charles A. Beard Memorial School Corporation for the duration of the expulsion.

* * * *

APPEAL RIGHTS

The student or the student's parent may request an appeal of this determination to the school board. A request for an appeal must be: (1) in writing; and (2) delivered in person or by mail; and (3) must be received by the school within 10 calendar days of the date this notice was received by the student or the student's parent. The written request for appeal must be submitted to:

Charles A. Beard Memorial School Corporation
345 North Adams Street
Knightstown, IN 46148
765-345-5101

IF YOU DO NOT REQUEST AN APPEAL WITHIN TEN (10) DAYS OF THE DATE THIS NOTICE OF ACTION WAS MAILED, ALL ADMINISTRATIVE RIGHTS TO CONTEST AND APPEAL THE DISCIPLINE ACTION TAKEN ARE GIVEN UP OR WAIVED.

After receipt of a request for an appeal, the school board will consider whether or not to hear the appeal. The discipline action stated above will continue in effect pending a final determination by the school board on any request for an appeal.



Signature

cc: Principal or Designee